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Attorneys for Plaintiff
ARTIFEX SOFTWARE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARTIFEX SOFTWARE, INC.,

Plaintiff,

v.

CONDUIT LTD.,

Defendant.

Case No.

COMPLAINT FOR
1. COPYRIGHT INFRINGEMENT
2. BREACH OF CONTRACT
3. BREACH OF CONTRACT

DEMAND FOR JURY TRIAL

Plaintiff Artifex Software, Inc. ("Artifex") for its Complaint against Defendant Conduit Ltd. ("Conduit"), which also does business under the names "Como" and "Swiftic," alleges and avers as follows:

INTRODUCTION

1. Artifex is the owner of MuPDF, a leading program used to interpret certain page description language files, such as Adobe Systems Incorporated's ("Adobe") Portable Document Format ("PDF") files. MuPDF is a widely used PDF interpreter and far outperforms its competitors on reliability and performance benchmarks. In addition to offering commercial licenses to MuPDF, Artifex has licensed and continues to license MuPDF to the public under conditional open source licenses—such as the GNU General Public License version 3.0 ("GNU

1 has offered and distributed its infringing products incorporating MuPDF in California through the
2 Internet.

3 JURISDICTION AND VENUE

4 8. Artifex's claim for copyright infringement arises under the Copyright Act of 1976,
5 17 U.S.C. § 101 *et seq.* Artifex also brings a related state law claim for breach of contract.

6 9. This Court has original subject matter jurisdiction over this action under 28 U.S.C.
7 §§ 1331, 1338, and 1367.

8 10. This Court has specific personal jurisdiction over Conduit as it, through (1) its
9 offering and distribution of its infringing products containing MuPDF through the Internet to
10 citizens of California and (2) conducting business with companies in California such as Artifex,
11 including entering into the GNU AGPL or the GNU GPL with Artifex, purposefully committed
12 within California the acts from which these claims arise and/or committed tortious acts outside
13 California, knowing and intending that such acts would cause injury within the state to Artifex, a
14 California corporation. The Court also has general personal jurisdiction over Conduit as it
15 conducts continuous, systematic, and routine business through the Internet within the state of
16 California and within the jurisdiction of this Court, which makes Conduit essentially at home in
17 California.

18 11. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(a).

19 INTRADISTRICT ASSIGNMENT

20 12. This is an Intellectual Property Action and therefore assignment to any division of
21 the Court is proper pursuant to Civil L.R. 3-2(c). Artifex believes assignment to the San
22 Francisco division is particularly appropriate given its proximity to the principal offices of Artifex
23 as well as Artifex's counsel of record.

24 GENERAL ALLEGATIONS

25 Artifex and MuPDF

26 13. Artifex is a closely-held, private corporation that was formed in 1993 and is
27 headquartered in Novato, California. Artifex develops and licenses software products that
28 interpret files written in a page description language ("PDL").

1 14. A PDL is a computer language developed for describing the contents of a printed
2 page. A widely used example of a PDL is the Portable Document Format (“PDF”) developed by
3 Adobe Systems Incorporated (“Adobe”). PDF files generally allow for a document created on
4 one platform to be displayed and/or printed on another platform exactly as it had been on the first.
5 This is true regardless of whether the document consists of graphics, text, or both. Moreover,
6 PDF files will display text on the screen as it would be displayed on printed pages regardless of
7 the font that the text was created in and regardless of whether the displaying computer (or printer)
8 is loaded with such fonts. Fonts used in PDF files are embedded within the PDF file itself,
9 eliminating the need for both computers to install the same fonts. PDF files, moreover, are
10 generally created from the print stream generated by a program. A PDF creator will capture the
11 information from the print stream and convert it into a PDF file. One drawback of PDF files is
12 that, in general, they cannot be edited once the underlying document is encapsulated as a PDF
13 file. These are called “static” PDF files.

14 15. MuPDF is a program developed by Artifex that can interpret PDF files.

15 16. MuPDF is a widely used PDF interpreter. Artifex has earned the confidence of its
16 customers through the demonstrated reliability of its products and highly competitive results on
17 performance benchmarks. These results have been accomplished only through extensive
18 investment in research and development of the MuPDF software as well as the scrutiny of dozens
19 of external beta testers and thousands of diverse users on the Internet. Artifex has expended
20 substantial amounts of money on research and development in order to improve and update
21 MuPDF.

22 17. Artifex’s business is, in part, based on the revenues derived from Artifex’s
23 position as the exclusive commercial licensing agent of MuPDF. Artifex licenses MuPDF to the
24 public under different licensing schemes. For those seeking to commercially distribute MuPDF
25 or any product that incorporates MuPDF, Artifex will grant, for a fee, a license to use, modify,
26 copy, and/or distribute MuPDF.

27 18. For non-commercial users and users willing to comply with certain open-source
28 licensing requirements, Artifex currently provides licenses for MuPDF under the GNU AGPL. A

1 true and correct copy of the GNU AGPL is attached hereto as **Exhibit 1**. Before February 2013,
2 and at least since January 21, 2010, Artifex provided licenses for MuPDF under the GNU GPL.
3 A true and correct copy of the GNU GPL is attached hereto as **Exhibit 2**.

4 19. Artifex does not charge a fee for licenses granted under the GPL open source
5 licenses, which were created to promote the open-source development of software products.
6 Towards that end, the GPL open source licenses grant the end user the right to copy, modify, or
7 distribute complying copies of MuPDF.

8 **Conduit and Its Infringing Software**

9 20. Conduit is a privately-held international software company headquartered in Israel,
10 does business under the names “Como” and “Swiftic,” and describes itself as “Israel’s first
11 billion-dollar internet company.”

12 21. On information and belief, at least as early as 2014, Conduit downloaded a copy of
13 Artifex’s MuPDF software previously licensed to non-commercial users under the GNU AGPL.
14 In the alternative, and dependent on the exact date(s) Conduit downloaded the version(s) of
15 MuPDF that Conduit used, Conduit used a version of MuPDF licensed to non-commercial users
16 under the GNU GPL.

17 22. Conduit subsequently incorporated Artifex’s MuPDF software into at least 9,505
18 of its mobile applications (collectively, the “Conduit Apps”).

19 23. Conduit purportedly removed MuPDF from the Conduit Apps in April 2017 after
20 Conduit’s customers informed it that Artifex had identified Conduit’s mobile applications as
21 infringing Artifex’s copyright in MuPDF.

22 24. After hearing from its customers in April 2017, Conduit purportedly took steps to
23 comply with GNU AGPL or, in the alternative, the GNU GPL, by providing the source code for
24 MuPDF—but not the source code for the Conduit Apps incorporating MuPDF—for download
25
26
27
28

1 from its website¹ and updating its “Swiftic Membership Agreement”² to include language
2 regarding open source software notices.

3 25. Before Conduit’s purported removal of MuPDF from the Conduit Apps and its
4 belated attempts to comply with the GNU AGPL or, in the alternative, the GNU GPL, however,
5 Conduit distributed versions of the Conduit Apps containing MuPDF to its customers over the
6 Internet.

7 26. Because Conduit used and distributed MuPDF without a commercial license with
8 Artifex, Conduit has consented to the terms of the GNU AGPL or, in the alternative, the GNU
9 GPL, and is a party to that agreement with Artifex.³ The GNU AGPL and GNU GPL provide at
10 Section 9:

11 You are not required to accept this License in order to receive or run
12 a copy of the Program. Ancillary propagation of a covered work
13 occurring solely as a consequence of using peer-to-peer transmission
14 to receive a copy likewise does not require acceptance. However,
15 nothing other than this License grants you permission to propagate
or modify any covered work. These actions infringe copyright if you
do not accept this License. Therefore, by modifying or propagating a
covered work, you indicate your acceptance of this License to do so.

16 27. Conduit’s use of MuPDF, however, did not comply with the conditions imposed
17 by the GNU AGPL or the GNU GPL.

18 28. Before April 2017, Conduit integrated MuPDF into the Conduit Apps in a way that
19 an end user interfaced with only the Conduit Apps without any option for not including MuPDF
20 or the obligations concerning MuPDF under the GNU AGPL or the GNU GPL. The end user was
21 never separately notified that MuPDF was part of the Conduit Apps. Conduit’s use and
22 incorporation of MuPDF was seamless and entirely invisible to the end user.

23
24
25 ¹ The file paths for the source code files demonstrate that they were uploaded in April 2017. See
26 <http://app4mobilebiz.wpengine.com/wp-content/uploads/2017/04/PDFViewerFragment.txt> and
<http://app4mobilebiz.wpengine.com/wp-content/uploads/2017/04/android-pdfview-master.zip>.

27 ² Available at: <http://app4mobilebiz.wpengine.com/swiftic-membership-agreement.html>

28 ³ For purposes of this complaint, Artifex alleges alternative breaches of sections of the GNU
AGPL and the GNU GPL that are identical both in their language and numbering.

1 29. Because the Conduit Apps incorporated MuPDF in this way, Conduit was required
2 to distribute its software with the accompanying source code. The GNU AGPL and the GNU
3 GPL provide at Section 6:

4 You may convey a covered work in object code form under the terms
5 of sections 4 and 5, provided that you also convey the machine-
6 readable Corresponding Source under the terms of this License, in
7 one of these ways:

8 a) Convey the object code in, or embodied in, a physical product
9 (including a physical distribution medium), accompanied by the
10 Corresponding Source fixed on a durable physical medium
11 customarily used for software interchange.

12 b) Convey the object code in, or embodied in, a physical product
13 (including a physical distribution medium), accompanied by a
14 written offer, valid for at least three years and valid for as long as you
15 offer spare parts or customer support for that product model, to give
16 anyone who possesses the object code either (1) a copy of the
17 Corresponding Source for all the software in the product that is
18 covered by this License, on a durable physical medium customarily
19 used for software interchange, for a price no more than your
20 reasonable cost of physically performing this conveying of source,
21 or (2) access to copy the Corresponding Source from a network
22 server at no charge.

23 ...

24 d) Convey the object code by offering access from a designated place
25 (gratis or for a charge), and offer equivalent access to the
26 Corresponding Source in the same way through the same place at no
27 further charge. You need not require recipients to copy the
28 Corresponding Source along with the object code. If the place to
copy the object code is a network server, the Corresponding Source
may be on a different server (operated by you or a third party) that
supports equivalent copying facilities, provided you maintain clear
directions next to the object code saying where to find the
Corresponding Source. Regardless of what server hosts the
Corresponding Source, you remain obligated to ensure that it is
available for as long as needed to satisfy these requirements.

 e) Convey the object code using peer-to-peer transmission, provided
you inform other peers where the object code and Corresponding
Source of the work are being offered to the general public at no
charge under subsection 6d.

30. Conduit never distributed and has never distributed any of the Conduit Apps with
the accompanying source code or source code offer while the software incorporated MuPDF.
Conduit thus failed to comply with and breached its license to use and distribute MuPDF under
the GNU AGPL or the GNU GPL.

1 31. Artifex has expended and will expend a significant amount of its own resources to
 2 enforce Conduit's contractual obligations under the GNU AGPL or the GNU GPL, including the
 3 costs incurred in filing this Complaint and the future costs associated with litigating Artifex's
 4 claims. Conduit, furthermore, has been unjustly enriched at the expense of Artifex by avoiding
 5 the payment of any license fees and profiting from the sale of the Conduit Apps, which contain
 6 MuPDF in breach of the GNU AGPL or the GNU GPL.

7 32. The GNU AGPL and the GNU GPL expressly state that any use of a product
 8 licensed thereunder or a work containing or derived from that product that does not comply with
 9 their respective requirements immediately terminates the licensee's right to use that product. The
 10 GNU AGPL and the GNU GPL provide at Section 8:

11 You may not propagate or modify a covered work except as
 12 expressly provided under this License. Any attempt otherwise to
 13 propagate or modify it is void, and will automatically terminate your
 14 rights under this License (including any patent licenses granted under
 15 the third paragraph of section 11).

16 33. Conduit's failure to distribute source code along with the Conduit Apps constitutes
 17 breach of the requirements set forth in the GNU AGPL and the GNU GPL, as identified above.
 18 Conduit's right to copy or distribute MuPDF terminated upon these acts.

19 **Artifex's Copyright in MuPDF**

20 34. MuPDF contains a substantial amount of original material that is copyrightable
 21 pursuant to 17 U.S.C. §102. Artifex has complied in all respects with the Copyright Act of 1976,
 22 17 U.S.C. §§ 101 *et seq.* and all other laws governing copyright, and has obtained from the
 23 Registrar of Copyrights Certificate of Registration No. TX 6-989-229 for MuPDF version
 24 20070105. A true and correct copy of this Certificate of Registration is attached hereto as
 25 **Exhibit 3**. Artifex has also obtained from the Registrar of Copyrights Certificate of Registration
 26 No. TX 8-473-187 for MuPDF version 0.5. A true and correct copy of that application is attached
 27 hereto as **Exhibit 4**.

28 35. Artifex has placed copyright notices on all copies of MuPDF version 20070105
 and version 0.5 that it has produced and licensed. Any copies of the programs published by
 Artifex or under Artifex's authority or license have been published in strict conformity with the

1 provisions of the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, and all other laws governing
2 copyright.

3 36. As set forth above, Conduit never entered into a commercial license agreement
4 with Artifex for its use of MuPDF, and it failed to comply with the terms of the GNU AGPL and
5 the GNU GPL such that Conduit used and distributed MuPDF without authorization under the
6 GNU AGPL or the GNU GPL, or any other agreement. Conduit, therefore, copied and
7 distributed MuPDF without the authorization of Artifex. Such activity constitutes infringement of
8 Artifex's copyright in MuPDF as well as a substantial, irreparable harm upon Artifex.

9 **FIRST CLAIM FOR RELIEF**

10 **COPYRIGHT INFRINGEMENT**

11 **(17 U.S.C. § 101 *et seq.*)**

12 37. Artifex realleges and incorporates by reference each and every allegation set forth
13 in paragraphs 1-36, inclusive.

14 38. Before initiating this action, Artifex registered version 20070105 of MuPDF with
15 the United States Copyright Office on January 5, 2007, under Registration No. TX 6-989-229.

16 39. Before initiating this action, Artifex registered version 0.5 of MuPDF with the
17 United States Copyright Office on February 1, 2018, under Registration No. TX 8-473-187.

18 40. Through the actions complained of herein, Conduit has infringed and will continue
19 to infringe Artifex's copyright in and relating to any version of MuPDF that Conduit used,
20 including version 20070105 and version 0.5 or derivative works thereof, by producing,
21 distributing, and placing upon the market the Conduit Apps, or portions thereof which were
22 copied from Artifex's copyrighted software.

23 41. During all relevant time periods, Conduit has lacked any valid license to shield its
24 infringing conduct.

25 42. Artifex is entitled to an injunction restraining Conduit, its officers, agents,
26 employees, assigns and all persons acting in concert with them from engaging in further such acts
27 of reproduction or distribution in violation of federal copyright law.
28

THIRD CLAIM FOR RELIEF
(In the alternative to the Second Claim for Relief)
BREACH OF CONTRACT
(GNU General Public License)

49. Artifex realleges and incorporates by reference each and every allegation set forth in paragraphs 1-48, inclusive.

50. In the alternative, Artifex has performed each of the conditions, covenants, and obligations imposed on it by the terms of the GNU GPL with Conduit.

51. In the alternative, Artifex granted Conduit a license to copy and distribute MuPDF under the GNU GPL. By Conduit's actions as set forth hereinabove, Conduit has substantially and materially breached the GNU GPL at least by failing to provide the source code of the Conduit Apps to each licensee or a written offer to provide a copy of the source code upon the request of each licensee.

52. In the alternative, as a direct and proximate result of these material breaches by Conduit, Artifex is entitled to an injunction requiring Conduit to distribute to each licensee of the Conduit Apps the complete corresponding source code for those products.

53. In the alternative, Artifex is further entitled to recover from Conduit the damages Artifex has sustained, including consequential damages, for Artifex's costs in enforcing the GNU GPL. The amounts cannot be determined at this time. Artifex is also entitled to recover as restitution from Conduit any unjust enrichment, including any gains, profits, and advantages that Conduit has obtained as a result of its breach of the GNU GPL. The amount of such unjust enrichment cannot be determined at this time.

PRAYER FOR RELIEF

Artifex prays for judgment against Conduit as follows:

1. For permanent injunctive relief, including an order restraining and enjoining Conduit from further infringement of Artifex's copyright, specifically:

a. that Conduit, as well as any successor entities, its directors and officers, agents, servants, employees, assigns, and all other persons acting in active

1 concert or privity or in participation with them, and each of them, be
2 enjoined from continuing to market, offer, sell, dispose of, license, lease,
3 transfer, display, advertise, reproduce, develop or manufacture any version
4 of MuPDF and any works derived or copied from any such version of
5 MuPDF or to participate or assist in any such activity;

6 b. that Conduit, as well as any successor entities, its directors and officers,
7 agents, servants, employees, assigns, and all other persons acting in active
8 concert or privity or in participation with them, be enjoined from directly
9 or indirectly infringing Artifex's copyright in MuPDF;

10 c. that Conduit, as well as any successor entities, its directors and officers,
11 agents, servants, employees, assigns, and all other persons acting in active
12 concert or privity or in participation with them, be enjoined to return to
13 Artifex any originals, copies, facsimiles, or duplicates of any version of
14 MuPDF or any works derived or copied from MuPDF in their possession,
15 custody, or control that are shown by the evidence to infringe any Artifex
16 copyright;

17 d. that Conduit be enjoined to recall from all distributors, wholesalers,
18 dealers, retailers, non-Artifex-licensed customers and distributors, and all
19 others known to Conduit any originals, copies, facsimiles, or duplicates of
20 any works shown by the evidence to infringe any Artifex copyright;

21 e. that Conduit be enjoined to deliver upon oath, to be impounded during the
22 pendency of this action, and for destruction pursuant to judgment herein,
23 all originals, copies, facsimiles, or duplicates of any version of MuPDF or
24 any works derived or copied from any such version of MuPDF in its
25 possession, custody, or control that are shown by the evidence to infringe
26 any Artifex copyright;

- f. that Conduit distribute to each licensee of the Conduit Apps the complete corresponding source code for the products in accordance with the GNU AGPL or the GNU GPL;
2. For compensatory damages against Conduit, including any consequential damages, in an amount to be determined at trial;
3. For statutory damages against Conduit in an amount to be determined at trial;
4. For an accounting of all gains, profits, and advantages derived by Conduit from its infringement and for its other violations of law;
5. For all profits and advantages derived by Conduit from its infringement and for its other violations of law to be deemed to be in constructive trust for the benefit of Artifex;
6. For restitution, unjust enrichment, and compensatory damages according to proof at trial;
7. For attorneys' fees and costs of suit incurred herein; and
8. That the Court grant such other, further, and different relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Artifex demands a jury trial on all issues so triable.

Dated: February 14, 2018

DARIN W. SNYDER
JESSE J. KOEHLER
ASHISH SUDHAKARAN
O'MELVENY & MYERS LLP

By: /s/ Darin W. Snyder
Darin W. Snyder

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